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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 486

ROBERTSON ROCK BIT COMPANY, INC., INDUSTRIAL MANUFACTURING & TOOL CO., and COLIN T. ROBERTSON,

Petitioners,

v.

HUGHES TOOL COMPANY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR REHEARING ON DENIAL OF PETITION FOR WRIT OF CERTIORARI.

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The Scheffer Press, Inc.—Financial 6-2694

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The Petition for Rehearing should be denied. It does not meet the requirements of Rule 33 of this Court, either as to timeliness of filing, or as to grounds for rehearing.

The petition for certiorari was denied on February 6, 1950. Petitioners had fifteen (15) days from this date within which to file their petition for rehearing "accompanied by proof of service". While the petition for rehearing was apparently filed sometime within the fifteen-day period, no notice reached counsel for Respondent until March 6, when copies of the petition for rehearing were received.

The petition for rehearing seeks to come within the provisions of Rule 33 permitting rehearing where, since denial

of a petition for certiorari, there have been "intervening circumstances of substantial or controlling effect". Two "intervening circumstances" are relied upon. The first is that the appeal in *Hughes Tool Company* v. *Williams*, 82 F. Supp. 408, has been argued in the Court of Appeals for the Tenth Circuit. The oral argument in that case is not such an "intervening circumstance" as is contemplated by Rule 33, and it is of no "substantial or controlling effect". Petitioners' speculations as to possibility of conflict of decision are in no sense based upon the alleged intervening circumstance, *i.e.*, the oral argument in the Tenth Circuit case. The same speculations were available on the original petition for certiorari.

The second alleged "intervening circumstance" is the decision of the Court of Appeals for the Tenth Circuit in *Chicago Pneumatic Tool Company* v. *Hughes Tool Company*. That decision (Appendix to Petition, pages 6-14) involved no issues here involved, but concerned the right of a court, having jurisdiction of the parties and the subject matter of a case, to enjoin the prosecution of a declaratory judgment action raising the same issues between the same parties, and filed after the first case was at issue and set for trial.

It is submitted that the Petition for Rehearing should be denied. It presents no substantial or controlling intervening circumstance and it was not properly filed within the time allowed by Rule 33.

Respectfully submitted,

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